UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,319	04/18/2001	Gary Stephen Shuster	409475-30	8357

23879 7590 08/02/2004	EXAMINER
BRIAN M BERLINER, ESQ	CHOUDHURY, AZIZUL Q

	ART UNIT	PAPER NUMBER
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899	2143	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _18 April 2000_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-20_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-20_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _18 April 2000_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Detailed Action

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being
indefinite for failing to particularly point out and distinctly claim the subject matter which
applicant regards as the invention. The phrase "inappropriate use" is considered broad.
For instance, it is uncertain what qualifies as inappropriate and it is also uncertain how
inappropriate use is determined. More detailed claim language is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as obvious over Kalkunte et al
(US Pat No: US005854900A), hereafter referred to as Kalkunte.

1.   With regards to claims 1 and 11, Kalkunte teaches a method (a system is able to
be a method), for operating a network server to discourage inappropriate use, wherein
the server is connected to a plurality of client devices, and configured to transfer

information between selected ones of the client devices and a memory for static

storage of information, said method comprising the steps of: receiving a request to

transfer a file between the memory and one of the plurality of client devices; removing a

packet of information from the file after said receiving step, the packet of information

comprising a defined number of information bits; transferring the packet of information

between the memory and the one of the plurality of client devices after said removing

step; pausing for a defined delay period after said transferring step; repeating said

removing step, said transferring step, and said pausing step in order until all of the file

has been transferred (The claimed steps are all known to occur in data transfers in

networks. This is especially true for networks that use the TCP/IP protocol. Kalkunte

teaches a network design that uses the TCP/IP protocol (column 9, line 43, Kalkunte).

In addition, Kalkunte's design allows for the adding of delays to the transfer of packet).

2.   With regards to claims 2 and 12, Kalkunte teaches a method (a system is able to

be a method), further comprising increasing the defined delay period after each

execution of said pausing step (Kalkunte's design allows for delay periods, including

defined delay periods as claimed (column 3, lines 9-61, Kalkunte)).

3.   With regards to claim 3 and 13, Kalkunte teaches a method (a system is able to

be a method), further comprising setting the defined delay period to a selected

predetermined value after each execution of said pausing step (Kalkunte's design

allows for delays to be set to a predetermined value as claimed (column 3, line 20, Kalkunte)).

4.   With regards to claims 4 and 14, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a calculated value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

5.   With regards to claims 5 and 15, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a selected predetermined value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

6.   With regards to claims 6 and 16, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined delay period to a calculated value after each execution of said pausing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

7.   With regards to claims 7 and 17, Kalkunte teaches a method (a system is able to
be a method), further comprising determining the calculated value from at least one
input parameter selected from the file size, server load, network response time, and
number of transfer requests from the client device within a defined prior period
(Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte).
This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte).
Kalkunte's design also allows the calculations to be formulated using network factors,
as claimed. No limitation is set as to where they delay must occur, it simply must occur
so that the packet is delayed in its transmission).

8.   With regards to claims 8 and 18, Kalkunte teaches a method (a system is able to
be a method), further comprising setting the defined number of information bits in the
packet of information to a calculated value after each execution of said pausing step
(Kalkunte's design allows for network data transfers using packets. Networks allow the
size of the packets to be set as claimed. Kalkunte's design allows for the delay value to
be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated
value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations
to be formulated using network factors, such as packet size, as claimed. No limitation is
set as to where they delay must occur, it simply must occur so that the packet is
delayed in its transmission).

9.   With regards to claims 9 and 19, Kalkunte teaches a method (a system is able to

be a method), further comprising setting the defined number of information bits in the

packet of information to a selected predetermined value after each execution of said

pausing step (Kalkunte's design allows for network data transfers using packets.

Networks allow the size of the packets to be set as claimed. Kalkunte's design allows

for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the

delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also

allows the calculations to be formulated using network factors, such as packet size, as

claimed. No limitation is set as to where they delay must occur, it simply must occur so

that the packet is delayed in its transmission).

10.   With regards to claims 10 and 20, Kalkunte teaches a method (a system is able

to be a method), further comprising initializing the defined number of information bits in

the packet of information prior to said removing step (Kalkunte's design allows for

network data transfers using packets. Networks allow the size of the packets to be set

as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61,

Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61,

Kalkunte). Kalkunte's design also allows the calculations to be formulated using

network factors, such as packet size, as claimed. No limitation is set as to where they

delay must occur, it simply must occur so that the packet is delayed in its transmission).

Remarks

After careful review of the application, the examiner failed to note any truly unique traits within the design claimed. The claims provided are seen as being general and would benefit from the inclusion of more detailed specifications. In addition, should the applicants have any further details regarding their design that would present their design as being truly unique over the prior art provided by the examiner, they are encouraged to amend the specifications and claims to reflect such changes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is 703-305-7209. The examiner can normally be reached on M-F.
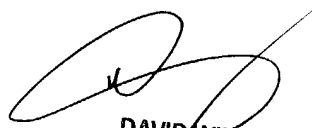
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AC

DAVID WILEY
SUPERVISORY PATENT EXAMINER
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